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such an act is within the power of Congress. We shall thus be able to avoid the danger pointed out by Mr. Chief Justice Taft in his opinion in the *Bailey* case, when he says, "Grant the validity of the law, and all that Congress would have to do hereafter in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction over which is reserved to the states by the Tenth Amendment to the federal Constitution, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called 'tax' upon departures from it. To give such magic to the word tax would be to break down all constitutional limitations of the powers of Congress and completely wipe out the sovereignty of the states."

W. E. B.

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SUPREME COURT REPORTS.—The REVIEW has been asked by the Court Reporter to publish the following statement:

"Last July Congress passed an act (Public Act No. 272) providing for the publication of the Official Reports of the Supreme Court in the government printing office and for their sale to the public at cost of production, including a part of the appropriation made for the maintenance of the Reporter's office. This did away with the method of publication through contracts between the Reporter and private publishing houses, which had obtained from the beginning. The last contract of that kind expired with the publication of Volume 256, which completed the reports for the October, 1920, term. The letting of a new contract to cover the opinions of the 1921 term was impracticable, owing to the pendency of the legislation, to the expectation that it would be enacted long before it actually was, and to definite indications that, when enacted, it would supersede the contract method.

"For various reasons incident to the ending of the old contract and the legislative change, editorial work on the opinions of the 1921 term was seriously delayed. Time also was consumed by administration preliminaries under the new law and in making necessary preparations in the printing office. Notwithstanding this, however, gratifying progress has been made. The reports of these opinions will be contained in three volumes, to be numbered 257, 258 and 259, all of which, it is confidently expected, will be published in bound and pamphlet form before the close of the year."

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THE RAILWAY STRIKE INJUNCTION.—The bill in this case was filed by the United States of America against various labor organizations, and officers of such organizations, concerned in the strike of railway shopmen. It alleged (in brief) a conspiracy on the part of defendants to compel the railroads to disregard the wage decision of the Labor Board, by obstructing the transportation of passengers and property in interstate commerce and the carriage of the mails. A temporary restraining order was issued on September 1, and a temporary injunction on September 25. None of the defendants answered the bill, but two of them appeared, moving to dismiss the bill and

opposing the motion for injunction. It appears that the defendants' affidavits left substantially uncontested all the allegations of the bill (supported, of course, by affidavits) save those connecting defendants with the numerous acts of violence which accompanied the strike. The last mentioned issue of fact was found against defendants, but this, though of political significance, is not important from the legal point of view, since those clauses of the injunction which are directed against acts of violence have not been seriously questioned. The court found the conspiracy and accordingly restrained defendants from (a) "interfering with, hindering or obstructing said railway companies \* \* \* in the operation of their railroads," etc.; (d) "inducing or attempting to induce, with intent to further said conspiracy, by the use of threats \* \* \* entreaties, argument, persuasion, reward or otherwise, any person or persons to abandon the employment of said railway companies, or to refrain from entering such employment"; (e) peaceful picketing; (i) "with intent to further said conspiracy by letters, printed or other circulars, telegrams, telephones, word of mouth, oral persuasion or communication, or through interviews published in newspapers, or other similar acts, encouraging, directing or commanding any person \* \* \* to abandon the employment of said railway companies or to refrain from entering the service," etc.; (2, b) "using, or causing to be used, or consenting to the use of any of the funds or moneys of said labor organizations in aid of or to promote or encourage the doing of any of the matters or things herein-before restrained."

The injunction rests, on the substantive side, upon the theory of conspiracy to obstruct interstate commerce and the carriage of the mails, the facts substantially admitted on the record being held to be an offense at common law and (more clearly) under the Sherman Act. It rests, on the procedural side, upon the ancient jurisdiction of Chancery to enjoin public nuisance. In this respect it has, like the *Debs* case (158 U. S. 564), a peculiarly firm foundation in that obstruction of highways is directly involved, an element which was but indirectly and partially involved in the *Coal Strike* case of 1919 (*U. S. v. Hayes*, not officially reported, 34 HARV. L. REV. 401).

Criticism of the injunction has been chiefly directed at the more drastic clauses of the injunction quoted above. It is true that these go far beyond what most courts have considered the limits of an employer's rights against striking employees. This injunction, however, is not based upon the private rights of the employers, but upon the authority of the sovereign to abate a public nuisance. All discussion of the case must proceed with this in full view. Granted the conspiracy, which was substantially admitted, there would seem to be no doubt of the propriety of restraining every act, however lawful in itself, which is designed to further, and does directly further, the conspiracy. The case is distinguished from the *Check-off* case (*Gasaway v. Borderland Coal Co.*, 278 Fed. 56; 20 MICH. L. REV. 548) in that the causal relation between the innocent means and the wrongful end is much more direct and obvious.

By the overwhelming weight of authority, constitutional guaranties of freedom of speech and the press do not extend to such a case. And Section

20 of the Clayton Act was obviously inapplicable because of the qualifying clause, "in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment." Whether, as asserted by the court, it was inapplicable for other reasons, is not so clear. A loose reading of the act might give the impression that Congress intended to prohibit injunctions in all labor cases, but its terms are too precise to admit of such construction.

The case bristles with nice legal questions, some of them fairly debatable. Doubt also arises as to the practicability of enforcing many of the clauses of the decree. And, like all the public nuisance injunctions, it leaves one wondering whether it accomplishes anything more than a declaratory judgment upon the controversy and a shifting from common law jury (in a criminal or quasi-criminal-public-nuisance case) to judge (in a contempt proceeding) of the power to find the facts constituting violation of the law; and, incidentally, a shifting of responsibility from the executive to the judicial branch of government. For the equity case proceeds upon the theory of a public wrong, which the executive might repress by measures identical (save for jury trial) with those available for the enforcement of the injunction. It is submitted, however, that as a matter of law the injunction was justified in every point, and that only the political attack in Congress can avail its opponents.

E. N. D.